

CIVIL LIABILITIES

CHAPTER 740

ILLINOIS COMPILED STATUTES

40/0.01

**CONTROLLED SUBSTANCE AND CANNABIS
NUISANCE ACT**

CIVIL LIABILITIES**(740 ILCS 40/) Controlled Substance and Cannabis Nuisance Act.**

(740 ILCS 40/0.01) (from Ch. 100 1/2, par. 13.9)

Sec. 0.01. Short title. This Act may be cited as the Controlled Substance and Cannabis Nuisance Act.

(Source: P.A. 86-1324.)

(740 ILCS 40/1) (from Ch. 100 1/2, par. 14)

Sec. 1. As used in this Act unless the context otherwise requires:

"Department" means the Department of State Police of the State of Illinois.

"Controlled Substances" means any substance as defined and included in the Schedules of Article II of the "Illinois Controlled Substances Act," and cannabis as defined in the "Cannabis Control Act" enacted by the 77th General Assembly.

"Place" means any store, shop, warehouse, dwelling house, building, apartment or any place whatever.

"Nuisance" means any place at which or in which controlled substances are unlawfully sold, possessed, served, stored, delivered, manufactured, cultivated, given away or used more than once within a period of one year.

"Person" means any corporation, association, partner, or one or more individuals.

(Source: P.A. 87-765.)

(740 ILCS 40/2) (from Ch. 100 1/2, par. 15)

Sec. 2. All places and the fixtures and movable contents thereof, used for the purpose of unlawfully selling, possessing, serving, storing, delivering, manufacturing, cultivating, giving away or using controlled substances are hereby declared to be nuisances and may be abated as hereinafter provided and the owners, agents, occupants of and any other person using any such place may be enjoined as hereinafter provided.

(Source: P.A. 87-765.)

(740 ILCS 40/3) (from Ch. 100 1/2, par. 16)

Sec. 3. (a) The Department or the State's Attorney or any citizen of the county in which a nuisance exists may file a complaint in the name of the People of the State of Illinois, to enjoin all persons from maintaining or permitting such nuisance, to abate the same and to enjoin the use of any such place for the period of one year.

(b) Upon the filing of a complaint by the State's Attorney or the Department in which the complaint states that irreparable injury, loss or damage will result to the People of the State of Illinois, the court shall enter a temporary restraining order without notice enjoining the maintenance of such nuisance, upon testimony under oath, affidavit, or verified complaint containing facts sufficient, if sustained, to justify the court in entering a preliminary injunction upon a hearing after notice. Every such temporary restraining order entered without notice shall be endorsed with the date and hour of entry of the order, shall be filed of record, and shall expire by its terms within such time after entry, not to

exceed 10 days as fixed by the court, unless the temporary restraining order, for good cause is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reason for extension shall be shown in the order. In case a temporary restraining order is entered without notice, the motion for a permanent injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character, and when the motion comes on for hearing, the Department or State's Attorney, as the case may be, shall proceed with the application for a permanent injunction, and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days notice to the Department or State's Attorney, as the case may be, the defendant may appear and move the dissolution or modification of such temporary restraining order and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Upon the filing of the complaint by a citizen or the Department or the State's Attorney (in cases in which the Department or State's Attorney do not request injunctive relief without notice) in the circuit court, the court, if satisfied that the nuisance complained of exists, shall allow a temporary restraining order, with bond unless the application is filed by the Department or State's Attorney, in such amount as the court may determine, enjoining the defendant from maintaining any such nuisance within the jurisdiction of the court granting the injunctive relief. However, no such injunctive relief shall be granted, except on behalf of an owner or agent, unless it be made to appear to the satisfaction of the court that the owner or agent of such place, knew or had been personally served with a notice signed by the plaintiff and, that such notice has been served upon such owner or such agent of such place at least 5 days prior thereto, that such place, specifically describing the same, was being so used, naming the date or dates of its being so used, and that such owner or agent had failed to abate such nuisance, or that upon diligent inquiry such owner or agent could not be found for the service of such preliminary notice. The lessee, if any, of such place shall be made a party defendant to such petition. If the property owner is a corporation and the Department or the State's Attorney sends the preliminary notice to the corporate address registered with the Secretary of State, such action shall create a rebuttable presumption that the parties have acted with due diligence and the court may grant injunctive relief.

(d) In all cases in which the complaint is filed by a citizen, such complaint shall be verified.

(Source: P.A. 95-503, eff. 1-1-08.)

(740 ILCS 40/3.1) (from Ch. 100 1/2, par. 16.1)

Sec. 3.1. Before the filing of a complaint under paragraph (c) of Section 3 of this Act, the State's Attorney shall, by personal service or by certified mail, provide to the owner of the place at which the nuisance is located, or the agent of the owner, written notice of the following:

- (1) That a nuisance, as defined in this Act, exists at the place specified in the notice;
- (2) That the owner of the place or his or her agent

has 14 days from the mailing of the notice or 7 days from personal service of the notice to appear at the State's Attorney's Office at the address provided in the notice to arrange to take action to abate the nuisance; and

(3) That failure to appear at the State's Attorney's Office within the time indicated may result in the State's Attorney filing a complaint to enjoin the use of the owner's property for a period of one year.

If the owner of the place or his or her agent does not appear at the State's Attorney's Office as requested within the time periods prescribed above, the State's Attorney may file a complaint under Section 3 of this Act. If the owner or his or her agent appears before the State's Attorney in the time prescribed, the owner or his or her agent may agree to comply with reasonable recommendations requested by the State's Attorney designed to abate the nuisance. If the owner or his or her agent does not affirmatively agree to follow the State's Attorney's recommendations, the State's Attorney may file a complaint under Section 3 of this Act. If the owner or his or her agent agrees to follow the State's Attorney's recommendations but subsequently fails to comply with those recommendations within 60 days of the owner's or his or her agent's appearance before the State's Attorney, the State's Attorney may proceed to file a complaint under Section 3 of this Act, except that in cases in which the prompt failure to file a complaint would not result in irreparable harm, loss, or damage, the State's Attorney shall, before the filing of the complaint, provide the owner of the place or his or her agent with written notification by personal service or by certified mail sent to the last known address of the owner or agent that he or she has failed to satisfactorily comply with the requested recommendations and that the State's Attorney intends to file a suit under Section 3 of this Act to abate the nuisance.

(Source: P.A. 92-55, eff. 7-12-01; 92-59, eff. 7-12-01.)

(740 ILCS 40/4) (from Ch. 100 1/2, par. 17)

Sec. 4. The defendant shall be held to answer the allegations of the complaint as in other civil proceedings. At all hearings upon the merits, evidence of the general reputation of such place, of the inmates thereof, and of those resorting thereto, shall be admissible for the purpose of proving the existence of such nuisance. If the complaint is filed upon the relation of a citizen, the proceeding shall not be dismissed for want of prosecution, nor upon motion of such relator, unless there is filed with such motion a sworn statement made by such relator and his attorney, setting forth the reasons therefor, and unless such dismissal is approved by the State's Attorney in writing or in open court. If the court is of the opinion that such proceeding ought not to be dismissed, the court may overrule such motion and may enter an order directing the State's Attorney to prosecute such cause to final determination. The cause shall be heard immediately upon issue being joined, and if the hearing is continued the court may permit any citizen of the county consenting thereto to be substituted for the original relator. If any such complaint is filed upon the relation of a citizen, and the court find that there was no reasonable ground or cause for filing the same, the costs may be taxed against such relator.

(Source: Laws 1965, p. 3637.)

(740 ILCS 40/5) (from Ch. 100 1/2, par. 18)

Sec. 5. The plaintiff at any time before, but not later than 10 days after, the filing of the answer, unless further time be granted by the court, may file interrogatories in writing concerning matters material to the allegations of the complaint or respecting the ownership of the property upon which it is claimed the nuisance is maintained. A full answer to each interrogatory under the oath of the defendant shall be filed with the clerk within 10 days after a copy of the interrogatories has been served upon him. For a failure to so answer interrogatories the court may strike the answer to the complaint from the files and enter an order of default and final judgment, and a rule to answer interrogatories may be entered and the court may punish a defendant for contempt of court for a refusal to obey such rule. No person shall be excused from answering interrogatories under oath on the ground that an answer may tend to incriminate him or subject him to a penalty or forfeiture. The answer shall be evidence against, but not on behalf of, the defendant and it and evidence derived from it shall not be used against him in any criminal proceeding other than as rebuttal evidence to testimony given by the defendant or in a case for perjury.

(Source: P.A. 87-765.)

(740 ILCS 40/6) (from Ch. 100 1/2, par. 19)

Sec. 6. If the existence of the nuisance is established, the court shall enter a judgment perpetually restraining all persons from maintaining or permitting such nuisance, and from using the place in which the same is maintained for any purpose, except a purpose that the court designates, for a period of one year thereafter, unless such judgment is sooner vacated, as hereinafter provided, and perpetually restraining the defendant from maintaining any such nuisance within the jurisdiction of the court. No injunction shall be entered against an owner, nor shall an order be entered that any place be closed or kept closed, if it appears that the owner or his or her agent has in good faith endeavored to prevent the nuisance or did not have knowledge of the nuisance. An owner or agent who has complied with the recommendations requested by the State's Attorney under Section 3.1 of this Act shall be deemed to have endeavored in good faith to prevent the nuisance. While the judgment remains in effect, such place shall be in the custody of the court. An order of abatement shall also be entered as a part of such judgment, which order shall direct the sheriff of the county to remove from such place all fixtures and movable property used in conducting or aiding or abetting such nuisance, and to sell the same in the manner provided by law for the sale of chattels in the enforcement of a judgment for the payment of money, and to close such place against its use for any purpose, except a purpose that the court designates, and to keep it closed for a period of one year unless sooner released as hereinafter provided. The sheriff's fees for removing and selling the movable property shall be taxed as a part of the costs, and shall be the same as those for levying upon and selling like property in the enforcement of a judgment for the payment of money. For closing the place and keeping it closed, the court

shall allow a reasonable fee to be taxed as part of the costs. Nothing in this Act contained shall authorize any relief respecting any other place than that named in the complaint.

(Source: P.A. 87-765.)

(740 ILCS 40/7) (from Ch. 100 1/2, par. 20)

Sec. 7. The proceeds of the sale of the movable property shall be applied in payment of the costs of the proceeding, and the balance, if any, shall be forwarded by the clerk of the circuit court to the State Treasurer for deposit into the Drug Treatment Fund, which is established as a special fund within the State Treasury. The Department of Human Services may make grants to persons licensed under Section 15-10 of the Alcoholism and Other Drug Abuse and Dependency Act or to municipalities or counties from funds appropriated to the Department from the Drug Treatment Fund for the treatment of persons addicted to alcohol, cannabis, or controlled substances. The Department may adopt any rules it deems appropriate for the administration of these grants. The Department shall ensure that the moneys collected in each county be returned proportionately to the counties through grants to licensees located within the county in which the assessment was collected. Moneys in the Fund shall not supplant other local, state or federal funds.

(Source: P.A. 88-670, eff. 12-2-94; 89-507, eff. 7-1-97.)

(740 ILCS 40/8) (from Ch. 100 1/2, par. 21)

Sec. 8. In case of the violation of any injunction or order of abatement issued under the provisions of this Act, the court may summarily try and punish the offender for his contempt of court. The hearing may be had upon affidavits, or either party may demand the production and oral examination of witnesses.

(Source: Laws 1965, p. 3637.)

(740 ILCS 40/9) (from Ch. 100 1/2, par. 22)

Sec. 9. If the owner of the place has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees, and allowances that are a lien on the place and files a bond in the full value of the property, to be ascertained by the court, with sureties, to be approved by the court conditioned that he will immediately abate any such nuisance that may exist at the place and prevent it from being established or kept therein within a period of one year thereafter, the court may, if satisfied of good faith, order the place to be delivered to the owner and the order of abatement cancelled so far as it may relate to such place.

The release of such place under the provisions of this Act does not release it from any judgment, lien, or liability to which it may be subject.

(Source: Laws 1957, p. 1120.)

(740 ILCS 40/10) (from Ch. 100 1/2, par. 23)

Sec. 10. Whenever a fine or costs shall be assessed under the provisions of this Act against the owner of any property herein declared to be a nuisance, such fine or costs shall constitute a lien upon such property to the extent of the interest of such owner, and an order of execution shall issue

thereon.

(Source: Laws 1957, p. 1120.)

(740 ILCS 40/11) (from Ch. 100 1/2, par. 24)

Sec. 11. (a) If any lessee or occupant, on one or more occasions, shall use leased premises for the purpose of unlawful possessing, serving, storing, manufacturing, cultivating, delivering, using, selling or giving away controlled substances or shall permit them to be used for any such purposes, the lease or contract for letting such premises shall, at the option of the lessor or the lessor's assignee, become void, and the owner or the owner's assignee may notify the lessee or occupant by posting a written notice at the premises requiring the lessee or occupant to vacate the leased premises on or before a date 5 days after the giving of the notice. The notice shall state the basis for its issuance on forms provided by the circuit court clerk of the county in which the real property is located. The owner or owner's assignee may have the like remedy to recover possession thereof as against a tenant holding over after the expiration of his term. The owner or lessor may bring a forcible entry and detainer action, or assign to the State's Attorney of the county in which the real property is located the right to bring a forcible entry and detainer action on behalf of the owner or lessor, against the lessee and all occupants of the leased premises. The assignment must be in writing on a form prepared by the State's Attorney of the county in which the real property is located. If the owner or lessor assigns the right to bring a forcible entry and detainer action, the assignment shall be limited to those rights and duties up to and including delivery of the order of eviction to the sheriff for execution. The owner or lessor remains liable for the cost of the eviction whether or not the right to bring the forcible entry and detainer action has been assigned.

(b) If a controlled substance is found or used anywhere in the premises of an apartment, there is a rebuttable presumption that the controlled substance was either used or possessed by a lessee or occupant or that a lessee or occupant permitted the premises to be used for that use or possession. A person shall not forfeit his or her security deposit or any part of the security deposit due solely to an eviction under the provisions of the Act.

(c) If a lessor or the lessor's assignee voids a contract under the provisions of this Section, and a tenant or occupant has not vacated the premises within 5 days after receipt of a written notice to vacate the premises, the lessor or the lessor's assignee may seek relief under Article IX of the Code of Civil Procedure. Notwithstanding Sections 9-112, 9-113 and 9-114 of the Code of Civil Procedure, judgment for costs against the plaintiff seeking possession of the premises under this Section shall not be awarded to the defendant unless the action was brought by the plaintiff in bad faith. An action to possess premises under this Section shall not be deemed to be in bad faith where the plaintiff based his or her cause of action on information provided to him or her by a law enforcement agency or the State's Attorney.

(Source: P.A. 89-82, eff. 6-30-95.)

(740 ILCS 40/13) (from Ch. 100 1/2, par. 25)
Sec. 13.

Nothing contained in this Act shall apply to any unlawful act which results from failing to comply with the provisions prescribed in the "Illinois Controlled Substances Act," enacted by the 77th General Assembly.

(Source: P. A. 77-766.)